

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW SUITE 225
WASHINGTON, D C 20005

www.balljanik.com

TELEPHONE 202 638 3307

FACSIMILE 202 783 6947

KARI MORELL

kmorrell@dc.bjllp.com

August 2, 2007

BY HAND DELIVERY

The Honorable Vernon Williams
Surface Transportation Board
395 E Street SW
Washington, DC 20423-001

FILED

AUG 2 - 2007

**SURFACE
TRANSPORTATION BOARD**

RECEIVED

Re STB Docket No. AB-341 (Sub-No. 1X), Southwestern Railroad
Company, Inc. - Abandonment Exemption - In Ellis County,
Oklahoma and Lipscomb, Ochiltree and Hansford Counties, Texas

Dear Secretary Williams

Attached for filing are the original and ten copies of a Petition for
Exemption under 49 U S C § 10502 Also attached is a check covering the \$5,400
filing fee

Please time and date stamp the extra copy of the Petition and return it
with our messenger

If you have any questions, please call me

Sincerely,



Karl Morell

ENTERED
Office of Proceedings

AUG - 3 2007

Part of
Public Record

Enclosures

FEE RECEIVED

AUG 2 - 2007

**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO AB-341 (SUB-NO 1X)

**SOUTHWESTERN RAILROAD COMPANY, INC
-- ABANDONMENT EXEMPTION --
IN ELLIS COUNTY, OKLAHOMA AND LIPSCOMB, OCHILTREE
AND HANSFORD COUNTIES, TEXAS**

PETITION FOR EXEMPTION

**Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N W
Suite 225
Washington, D C 20005
(202) 638-3307**

**Attorney for
Southwestern Railroad
Company, Inc**

Dated August 2, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO AB-341 (SUB-NO 1X)

SOUTHWESTERN RAILROAD COMPANY, INC
-- ABANDONMENT EXEMPTION --
IN ELLIS COUNTY, OKLAHOMA AND LIPSCOMB, OCHILTREE
AND HANSFORD COUNTIES, TEXAS

PETITION FOR EXEMPTION

Southwestern Railroad Company, Inc ("SWRR") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U S C § 10502, from the prior approval requirements of 49 U S C § 10903, SWRR's abandonment of a 85 3-mile rail line located in Ellis County, Oklahoma and Lipscomb, Ochiltree and Hansford Counties, Texas

PROPOSED TRANSACTION

SWRR proposes to abandon its rail line located between milepost 0 10, at Shattuck, Oklahoma, and milepost 85 4, at Spearman, Texas in Ellis County, Oklahoma and Lipscomb, Ochiltree and Hansford Counties, Texas (the "Line") The Line traverses U S Postal Service Zip Codes 73858, 79034, 79024, 79005, 79070, 79033, 79093 and 79081 A map of the Line is attached as Exhibit A.

Based on information in SWRR's possession, the Line does not contain any federally granted rights-of-way Any documentation in SWRR's possession will be made available to those requesting it

STATEMENT OF FACTS

SWRR acquired the Line, along with other rail lines, in 1990 from The Atchison, Topeka Santa Fe Railway Company See Finance Docket No 31613, Notice of Exemption decided April 16, 1990

The only traffic that moved over the Line since it was acquired by SWRR has been primarily outbound agricultural products and some inbound shipments of sand, clay and pipe Perryton Equity Exchange, with locations at Perryton and Twichell, Texas ships wheat outbound. Hi-Plains Hull Company, located at Perryton, receives inbound loads of clay Dowell Schlumberger, Inc , located at Perryton, receives inbound loads of sand W-B Supply, located at Perryton, receives inbound loads of pipe Cargill, Inc , located in Spearman, TX, ships wheat outbound and, in years past, received inbound loads of corn

SWRR's outbound agricultural traffic began to decline significantly after BNSF Railway Company's predecessor ("BNSF") opened a 110-car transload facility outside of Shattock and Union Pacific Railroad Company ("UP") opened its 110-car transload facility at Liberal, KS The cost of trucking the agricultural products from locations along the Line to the nearby transload facilities is more than offset by the reduced rail rates charged by BNSF and UP for unit train movements

As the following table illustrates, in 2004 and 2005, SWRR handled an average of 1,204 cars annually and generated an average of \$525,025 in gross revenues on the Line In 2006, SWRR handled 627 cars and generated \$343,183 in gross revenues before a bridge was destroyed by fire that severed the active rail shippers from the interstate rail network

<u>YEAR</u>	<u>ANNUAL CARLOADS</u>	<u>GROSS REVENUES¹</u>
2004	1,258	\$572,244
2005	1,150	\$477,805
2006	627	\$343,183

In 2005, service to the shippers was provided an average of two to three days a week. SWRR utilized a two-man crew which was stationed in Perryton, TX. On the operating days, the crew would gather up the loaded cars along the Line, attach them to the locomotives and proceed to the BNSF interchange at Shattuck. Upon delivery of the loaded cars, the crew would leave the locomotives at Shattuck until the next delivery of empty or loaded cars from BNSF. On the non-operating days, the crew would perform maintenance work on the Line and maintenance and repair work on the two locomotives.

Trains on the Line were powered by a GP 35 and a GP 7 locomotive. The two individuals worked full time on the Line. Approximately 50 percent of their time was spent operating the trains, 35 percent of their time was spent on track maintenance and the remaining 15 percent of their time was spent on locomotive repair and maintenance.

REVENUE AND COST DATA FOR 2005²

During 2005, SWRR generated the following revenues on the Line:

Revenue

Freight Originating and/or Terminating On-Branch	\$449,650
Bridge Traffic	0
Other Income	<u>28,155</u>
Total Revenues	\$477,805

¹ Includes freight revenues and other income.

² SWRR has elected to present revenue and cost evidence for 2005, since that was the last full year of operations.

On-Branch Avoidable Costs

SWRR's on-branch avoidable costs for 2005 were as follows

a Maintenance-of-Way and Structures	\$511,800
b Maintenance of Equipment	47,168
c Transportation	177,295
d General & Administrative	165,148
e Deadheading, Taxi and Hotel	14,917
f Overhead Movement	0
g Freight Car Costs (other than return)	13,547
h Return on Value – Locomotives	2,301
i Return on Value – Freight Cars	0
j Revenue Taxes	0
k Property Taxes	<u>48,374</u>
Total Avoidable costs	\$980,550
Avoidable (Loss) or Profit	(\$502,745)

REVENUES

The identified freight revenues generated by SWRR in 2005 were all from traffic originated or terminated on the Line. The Line is stub-ended and, therefore, not capable of handling overhead traffic. In 2005, SWRR generated gross revenues of \$449,650 from freight operations, including switching and demurrage revenues, and \$28,155 in other income, mainly from leases along the Line.

AVOIDABLE COSTS

Lines b through k under On-Branch Costs represent the actual on-branch costs incurred by SWRR in operating the Line during 2005.³ SWRR is utilizing normalized maintenance costs for Maintenance-of-Way and Structure costs (line a).

³ The costs are derived from the Income and Expense Statements for the Shattuck Branch which are prepared monthly by SWRR's in-house accountant and certified annually by an independent accounting firm.

Maintenance-of-way and Structure costs (line a) equal \$511,800 and are based on normalized maintenance levels necessary to maintain the Line in Class 1 operating conditions. The actual maintenance-of-way costs incurred by SWRR on the Line in 2005 are estimated to be approximately \$78,039.⁴ The Board and its predecessor have long recognized the appropriateness of considering normalized maintenance costs in instances of deferred maintenance. *See Chicago and North Western Transp. Co. – Abandonment*, 366 I.C.C. 373, 377 (1982) (“Normalized maintenance is the amount needed for economic and efficient operation over the long term.”). We have, in the past, applied normalized maintenance calculations to actual maintenance figures and found that costs for normalized maintenance when compared to actual maintenance expenditures are indicative of deferred maintenance and are to be given consideration in determining whether or not the public convenience and necessity permit abandonment of a line.”)

The normalized maintenance costs of \$6,000 per mile being utilized by SWRR are conservative and based on the per-mile maintenance costs accepted by the Board and its predecessor in other abandonment proceedings.⁵ For example, the Board and its predecessor found as reasonable per-mile normalized maintenance costs of \$10,943 in STB Docket No. AB-33 (Sub-No. 156), *Union Pacific Railroad Company – Abandonment – In Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX* (not printed), served November 8, 2000, \$6,957 in

⁴ Actual maintenance costs are comprised of labor, parts and equipment. The Line was operated and maintained by two employees and approximately 35 percent of their on-duty time was spent maintaining the Line. Consequently, the estimated labor costs for maintenance of way are \$53,692 [35 percent of total wages and fringe benefits (WP 1-Items 400L, 406L, and 408L)]. In 2005, the cost of track materials and supplies was \$21,448 (WP 1-Item 435M) and the cost of repair equipment was \$2,899 (WP 1-Item 431E).

⁵ The \$6,000 per mile maintenance cost is used only for the mainline track and not for the approximately 12.5 miles of sidings and yard tracks. No maintenance-of-way costs are included for the sidings and yard tracks.

STB Docket No AB-564 *Camas Prairie Railnet, Inc – Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID* (not printed), served September 13, 2000; \$6,029 in STB Docket No AB-441 (Sub-No 2X), *SWKR Operating Co – Abandonment Exemption in Cochise County, AZ* (not printed), served February 14, 1997, slip op at 5 (“We know from extensive experience that \$6,000 per mile/per year is a reasonable figure for maintenance by a Class III railroad”)

Maintenance of Equipment costs (line b) include wages and fringe benefits associated with locomotive repair and maintenance (\$23,011),⁶ locomotive repair costs (\$8,582),⁷ locomotive supplies (\$4,270),⁸ and locomotive depreciation (\$11,305)⁹

Transportation costs (line c) include wages and fringe benefits associated with the freight operations on the Line (\$76,703),¹⁰ locomotive fuel costs (\$94,123),¹¹ and equipment rentals (\$6,469)¹² General and Administrative expenses (line d) include FRA User Fees (\$229),¹³ motor vehicle expense (\$3,988),¹⁴ claims (\$12,772),¹⁵ utilities (\$3,228),¹⁶ telephone (\$4,429),¹⁷

⁶ Approximately 15 percent of the two employees’ on-duty time was spent repairing and maintaining the two locomotives that were dedicated to the Line. Consequently, \$23,011 of the total wage and fringe benefit costs are associated with locomotive repair and maintenance [WP 1-Items 400L, 406L and 408L]

⁷ WP 1-Item 422E. These costs consist of parts for the locomotives

⁸ WP 1-Item 423E

⁹ SWRR utilized one GP 35 locomotive and one GP 7 locomotive on the Line. In 2005, SWRR took a depreciation expense of \$525 for one locomotive and \$10,780 for the other locomotive

¹⁰ Approximately 50 percent of the two employees on-duty time was spent conducting freight operations. Consequently, \$76,703 of the total wages and fringe benefits are associated with transportation costs (WP 1-Items 400L, 406L and 408L)

¹¹ WP 1-Item 421E

¹² WP 1-Item 434E

¹³ WP 1-Item 440G

¹⁴ WP 1-Item 427E. The motor vehicle was used to transport the crew and hi-rail the Line for inspection and maintenance purposes and the amount includes repair costs

¹⁵ WP 1-Item 443G

¹⁶ WP 1-Item 451G

¹⁷ WP 1-Item 452G.

office and general supplies (\$1,025),¹⁸ insurance costs (\$102,850),¹⁹ miscellaneous expenses (\$475),²⁰ and taxes and licenses (\$120)²¹ SWRR also operates two additional rail lines in New Mexico. Some General and Administrative expenses are not easily attributable to either the New Mexico lines or the Shattuck Branch. Consequently, SWRR apportions these expenses between the three lines. For example, the Home Office expense is allocated on the basis of gross revenues generated by the three lines. In 2005, SWRR attributed \$36,032 of these expenses to the Line. Deadheading, Taxi and Hotel expenses (line e) include travel expenses (\$5,550),²² equipment and vehicle fuel expenses (\$9,096)²³ and meals (\$271)²⁴

Because the Line is stub-ended, there are no costs associated with overhead movements (line f). Freight car costs (line g) in 2005, consisting of car hire payments, were \$13,547.²⁵

In 2005, SWRR utilized one GP 35 and one GP 7. One locomotive cost \$40,000 and, at the beginning of 2005, had accumulated depreciation of \$39,475. The other locomotive cost \$75,459 and, at the beginning of 2005, had accumulated depreciation of \$57,120. Consequently, the return on value (line h) for these locomotives in 2005 was \$2,301 [$\$115,459 - \$96,595 \times 12.2\%$]

Freight car cost-return on value (line i) was \$0, since the cars used on the Line were all foreign cars.

¹⁸ WP 1-Items 460G and 461G

¹⁹ WP 1-Item 470G

²⁰ WP 1-Item 490G

²¹ WP 1-Item 442G

²² WP 1-Item 410G.

²³ WP 1-Item 429E

²⁴ WP 1-Item 430E

²⁵ WP 1-Item 424E

There were no revenue taxes (line j) associated with SWRR's operations over the Line in 2005. Property taxes (line k) totaled \$48,374.²⁶

FORECAST YEAR HYPOTHETICAL OPERATIONS²⁷

If SWRR were to restart operations on the Line, it would first need to rebuild the destroyed bridge. Estimates received by SWRR last year averaged about \$208,000 to repair the bridge. For purposes of this proceeding, SWRR is using the 2005 revenue and cost figures set forth above to estimate Forecast Year operations, with one adjustment: the cost of repairing the destroyed bridge. SWRR is using the 2005 figures even though the projected revenues for the Forecast Year are below the revenues earned in 2005 and the projected costs for the Forecast Year are well above the actual costs incurred in 2005. Since 2005, weather conditions in the Texas Panhandle have had a significant adverse effect on crop yields which, in turn, would reduce car-loadings for the SWRR in the Forecast Year. Conversely, costs have risen since 2005, particularly the cost of fuel and track materials.²⁸

If SWRR were to repair the bridge and reopen the Line, SWRR would generate the following revenues and incur the following costs on the Line in the Forecast Year:

Revenue.

Freight Originating and/or Terminating On-Branch	\$449,650
Bridge Traffic	0
Other Income	<u>28,155</u>
Total Revenues	\$477,805

²⁶ WP 1-Item 441G

²⁷ Pursuant to 49 C.F.R. § 1152.2(h), the Forecast Year is the 12-month period beginning August 1, 2007.

²⁸ If the same two locomotives were to be used in the Forecast Year as in 2005, the depreciation expense and the stated return on value for the locomotives would be somewhat overstated.

On-Branch Avoidable Costs

SWRR's projected on-branch avoidable costs for the Forecast Year are as follows

a Maintenance-of-Way and Structures	\$511,800
b Maintenance of Equipment	47,168
c Transportation	177,295
d General & Administrative	165,148
e Deadheading, Taxi and Hotel	14,917
f Overhead Movement	0
g Freight Car Costs (other than return)	13,547
h Return on Value – Locomotives	2,301
i Return on Value Freight Cars	0
j Revenue Taxes	0
k Property Taxes	48,374
l Bridge Repair	<u>208,000</u>
Total Avoidable costs	\$1,188,545
Avoidable (Loss) or Profit	(\$710,740)

OPPORTUNITY COSTS

Opportunity costs reflect the economic loss experienced by SWRR from forgoing a more profitable alternative use of the assets associated with the Line Pursuant to *Abandonment*

Regulations – Costing, 31 C.C. 2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of (1) allowable working capital, (2) the net liquidation value (“NLV”) of the Line, and (3) current income tax benefits (if any) resulting from abandonment

The NLV of the track components of the Line is set forth in the following Table

Net Liquidation Value Of The Line²⁹
85.3 Track Miles of Mainline and 12.5 Track Miles of Sidings and Yard Track

Weight	Net Tonnage	Value/Ton	Total \$ Value
Rail:			
75 LB	92.63 Tons	\$250 00	\$ 23,157 50
85 LB	14,232.59 Tons	\$300 00	\$4,269,777.00
90 LB	298 77 Tons	\$400 00	\$ 119,508.00
110 LB	230 74 Tons	\$500 00	\$ 115,370 00
112 LB	58 17 Tons	\$650 00	\$ 37,810.50
115 LB	79 54 Tons	\$700 00	\$ 55,678 00
132 LB	54 12 Tons	\$650 00	\$ 35,178 00
BARS:			
75 LB-132 LB	800 Tons	\$250.00	\$ 200,000 00
PLATES:			
75 LB-132 LB	2.400 Tons	\$250 00	\$ 600,000 00
SPIKES & BOLTS			
ANCHORS:			
75 LB-132 LB	600 Tons	\$250 00	\$ 150,000.00

²⁹ The quantities, quality and value per ton of the track components are based on a detailed inspection of the Line conducted in June 2006 by Railroad Materials Salvage, Inc. ("Railroad Materials"). While SWRR considers the quantities estimates to be accurate, the valuations may be somewhat low. For example, Railroad Materials' valuations do not take into account the net salvage value of the ballast or the value of the reusable ties on the Line. Consequently, the NLV being utilized in this Petition is likely to be below the actual, current NLV. Therefore, these calculations should not serve as a proper valuation for purposes of any offer of financial assistance ("OFA"). Should an OFA be filed in this proceeding, SWRR will recalculate the NLV utilizing current and more accurate values for the salvageable materials on the Line.

Total Salvage Value: **\$ 5,606,479.00**

REMOVAL COSTS:

<u>Net Tons</u>	<u>Cost/Ton</u>	<u>Total Removal Costs</u>
18,846	\$40.00	\$753,840 00
TRANSPORTATION COSTS:		\$942,300 00³⁰
NET SALVAGE VALUE		<u>\$3,910,339.00</u>

The Line consists of 85.3 miles of main line track and about 12.5 miles of side and yard track, for a total of 97.8 miles of track that can be salvaged. The track components consist of 15,046.56 net tons of track and 3,800 net tons of OTM. The total value of the track components is \$5,606,479, and the total removal and transportation costs are estimated as \$1,696,140. Consequently, the NLV of the track structures on the Line is \$3,910,339.

The underlying right-of-way is primarily, if not totally, held in fee. While SWRR has not retained a real estate expert to value the right-of-way, based on SWRR's knowledge of recent sales along the Line, SWRR estimate that the gross value of the real estate is approximately \$978,500. Adjusting the gross value by 13 percent to account for selling costs, holding costs/gains and a discount factor, produces a net real estate value of \$851,295.³¹

Consequently, the Net Liquidation Value for the Line equals \$4,761,634.

VALUATION OF ROAD PROPERTIES:

a Working Capital	48,285 ³²
b Income Tax Consequences	(887,528) ³³

³⁰ The transportation costs are estimated at \$50 per ton.

³¹ The adjustment assumes a sell-off period of 2 years, 10 percent real estate commission, very limited holding costs, since the only holding costs will be property taxes and the lease incomes partially offset those costs, and a modest discount factor. In STB Docket No. AB-492 (Sub-No 2X), *Fillmore Western Railway Company – Abandonment Exemption – In Fillmore County, NE* (not printed), served October 31, 2001 (“*Fillmore*”), the Board adjusted the gross land value by approximately 13.6 percent. Since the property in *Fillmore* generated no income whereas the Line does, SWRR's use a 13 percent adjustment to the gross land value is reasonable.

³² On-branch Avoidable costs (\$1,188,545) less depreciation (\$11,305) and less Return on Value – Locomotive (\$2,301) = \$1,174,939 divided by 365 and times 15 = \$48,285.

³³ SWRR is an S corporation. Thus, the first \$376,918 of gains are taxed as ordinary income at a tax rate of 39 percent and the remainder is taxed as capital gains at the rate of 19 percent. The book value of the land and un-depreciated track value total \$487,188.

c Net Liquidation Value	4,761,634
d Valuation of Property Before Holding Gain	3,922,391
Nominal Rate of Return	17.5%
Total Return on Value – Opportunity Cost.	\$686,418 ³⁴
SUBSIDY:	
a. Forecast Year Avoidable (Loss) or Profit from Operations	(\$710,740)
b Estimated Rehabilitation	\$0 ³⁵
c Total Return on Value – Opportunity Cost	<u>(\$686,418)</u>
Estimated Subsidy Payment	(\$1,397,158)

SUMMARY

In 2005, SWRR would have had an operating loss of \$502,745 from operations on the Line if a normalized level of maintenance had been performed. Even if the actual maintenance costs (\$78,039) instead of the normalized maintenance costs (\$511,800) are utilized, SWRR experienced an operating loss of approximately \$68,984 during 2005. Moreover, SWRR is incurring foregone opportunity costs of approximately \$686,418, for a total economic loss of approximately \$1,397,158 in the Forecast Year.

EXEMPTION REQUESTED

SWRR seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for SWRR to abandon this unused 8.53-mile rail line.

Under 49 U.S.C. § 10502, the STB must exempt a transaction from regulation when it finds that:

³⁴ SWRR is not including any Holding Gains or Losses. Given the historically high prices for steel, it is more likely than not that the prices will decline rather than increase during the Forecast Year. Even if the prices continue to increase, such increases will likely be more than offset by the low NLV being utilized to calculate SWRR's opportunity cost.

³⁵ The estimated cost of repairing the damaged bridge is already included in the Avoidable costs.

(1) regulation is not necessary to carry out the rail transportation policy of 49 U S C § 10101, and

(2) either

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505.

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H. R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I. C. C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp v. United States*, 740 F.2d 1023 (D. C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H. R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. See, e.g., *Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 STB 110 (1998), STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). By abandoning the Line, SWRR will be able to avoid the out-of-pocket expenses and significant opportunity costs associated with retaining this underutilized Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). See, e.g., STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997, STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. SWRR will be able to rid itself of a line that has not seen traffic in a year and utilize the salvage funds to maintain the tracks on the remainder of SWRR’s system. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since the Line has been inactive for a year.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. See, e.g., Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad*

Company – Abandonment Exemption – Gilchrist and Levy Counties, FL (not printed), served January 16, 1992, Docket No AB-6 (Sub No 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993

The proposed transaction is clearly of limited scope SWRR is seeking to abandon a 85 3-mile line that traverses a predominantly rural area with little demand for rail service in recent years There are only five customers on the Line that ship by rail and they make only nominal use of SWRR's services In 2005, these customers shipped collectively only about 13 carloads per route mile over the Line Consequently, SWRR's operations over the Line have been very limited If SWRR were to restart operations over the Line, SWRR would be confronted with low volumes of traffic and significant operating losses The limited geographic area involved and the lack of use demonstrate the limited scope of the proposed abandonment *See, e g .* Docket No AB-397 (Sub-No 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995, Docket No AB-6 (Sub-No 337X), *Burlington Northern Railroad Company – Abandonment Exemption – In Floyd, Hale and Lubbock Counties, TS* (not printed), served March 27, 1992, slip op. at 2 (“because the proposed abandonment affects only four shippers with minimal traffic levels, the transaction is of limited scope”)

C. This Transaction Will Not Result In An Abuse of Market Power

There has been no freight traffic on the Line for the last year Therefore, regulation is not necessary to protect shippers from an abuse of market power *See, e g .* STB Docket No AB-55 (Sub-No 576) *CSX Transportation, Inc – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999, STB Docket No AB-55 (Sub-No 563X), *CSX*

Transportation, Inc – Abandonment Exemption In Harrison County, WV (not printed), served September 25, 1998, *Georgia Central*

Even prior to the destruction of the bridge, the shippers on the Line utilized trucks and the nearby transload facilities. All of the traffic moving to and from the Line is truck competitive. The communities along the Line have an adequate highway network capable of supporting motor carrier transportation. For example, State Highway 15 runs essentially parallel to the Line. Transportation services are available from numerous motor carriers that serve the area. Moreover, the shippers on the Line have available the nearby services of BNSF and UP. BNSF operates a transload facility near the end of the Line at Shattuck and UP operates a similar facility in Liberal, KS, which is only about 47 highway miles from Perryton. The nearby transload unit train services offered by BNSF and UP are more price-competitive than the all rail interline services offered by SWRR. Indeed, well before the bridge was damaged, much of the traffic moving off the Line had already been diverted to the transload facilities.

Accordingly, the shippers on the Line have more than adequate intra- and intermodal options available. Where, as here, few shippers utilize the rail line to be abandoned and they have adequate alternative transportation options available, there is no potential abuse of market power. See Docket No. AB-290 (Sub-No. 123X), *Norfolk Southern Railway Company – Abandonment Exemption – In Franklin, Marion, and Winston Counties, AL* (not printed), served May 3, 1995.

Moreover, the Board and its predecessor have consistently rejected speculation about future traffic as a sound basis for denying the abandonment of an otherwise unprofitable rail line. See, e.g., STB Docket No. AB-433X, *Idaho Northern & Pacific Railroad Company – Abandonment Exemption – In Wallowa and Union Counties, OR* (not printed), served April 16,

1997 ("*Idaho Northern*"),³⁶ STB Docket No 290 (Sub-No 260X), *Tennessee Railway Company – Abandonment Exemption – In Scott County, TN* (not printed), served June 17, 2005 ("*Tennessee*"),³⁷ STB Docket No AB-6 (Sub-No 370X), *Burlington Northern Railroad Company – Abandonment Exemption – Between Mesa and Basin City, Franklin County, WA* (not printed), served January 27, 1997, Docket No AB-290 (Sub-No 122X), *Norfolk and Western Railway Company – Abandonment Exemption – In Randolph, Macon, Adair, and Schuyler Counties, MO, and Davis, Appanoose, and Monroe Counties, IA* (not printed), served September 17, 1993, Docket No AB-55 (Sub-No 413X), *CSX Transportation, Inc – Abandonment Exemption – In Webster County* (not printed), served May 29, 1992 Also, a shipper "may not insist upon the maintenance of a burdensome line solely for its own benefit." *Busboom Grain Company, Inc v ICC*, 856 F 2d 790, 795 (7th Cir 1988)

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C F R §§ 1105.07 and 1105.08 were forwarded to the Board on June 22, 2007 The Certificate of Service is attached as Exhibit C.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B

LABOR PROTECTION

³⁶ In *Idaho Northern*, the Board granted the abandonment even though a lumber mill had projected a total of 2,102 outbound movements In granting the abandonment, the Board found the traffic projections speculative but also noted that the mill had been utilizing truck service to deliver the finished products

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in *Oregon Short Line R Co – Abandonment – Goshen*, 360 I C C 91 (1979)

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, SWRR respectfully urges the Board to grant the exemption.

Respectfully submitted,



Karl Morrell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Dated August 2, 2007

³⁷ Citing *Idaho Northern*, the Board, in *Tennessee*, noted that under its precedent “mere speculation about future traffic is not a sound basis upon which to deny an abandonment.” *Tennessee*, slip op., at 4.

EXHIBIT A

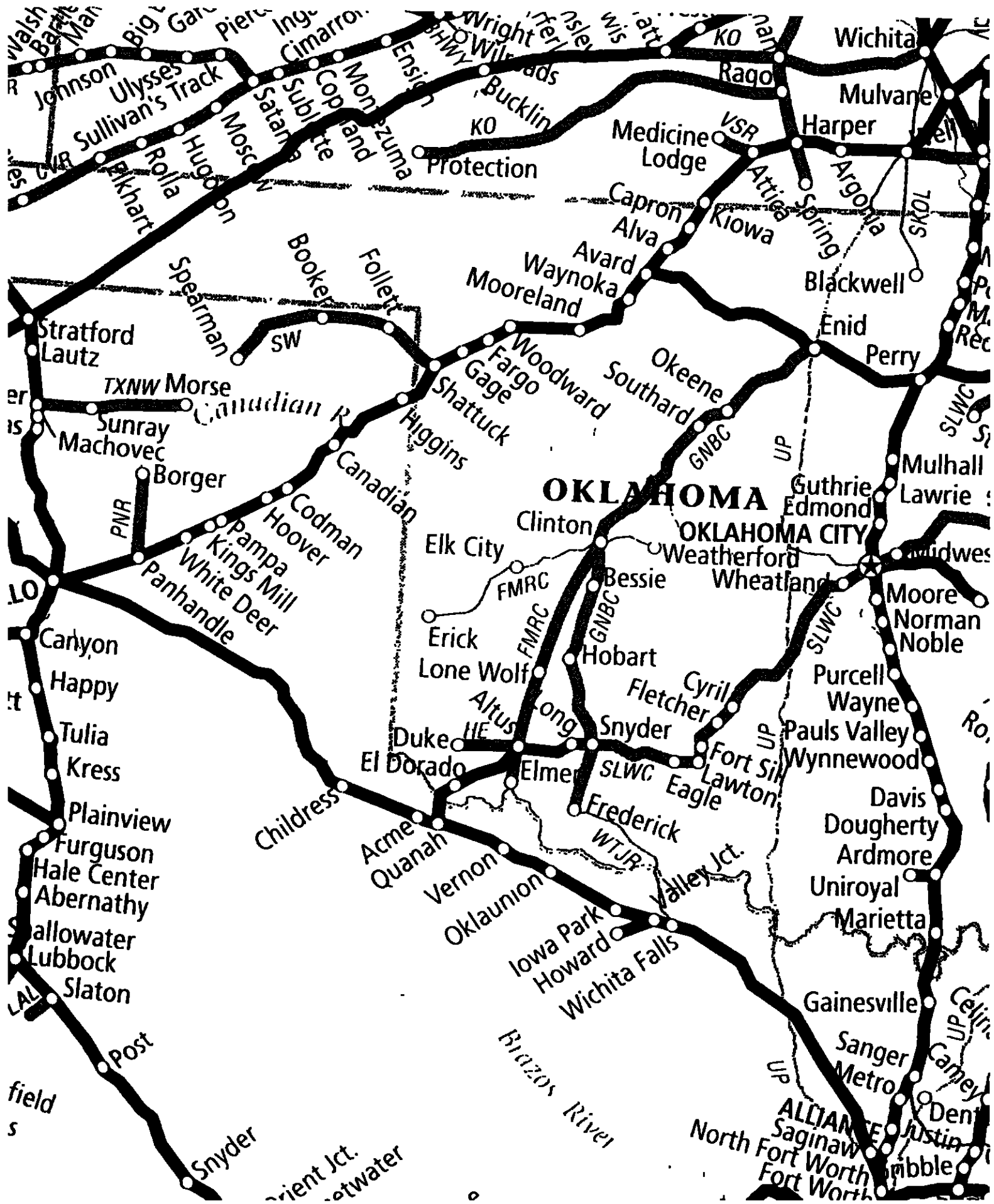


EXHIBIT B

SURFACE TRANSPORTATION BOARD

STB DOCKET NO AB-341 (SUB-NO 1X)

**SOUTHWESTERN RAILROAD COMPANY, INC
--ABANDONMENT EXEMPTION--
IN ELLIS COUNTY, OKLAHOMA AND LIPSCOMB, OCHILTREE AND HANSFORD
COUNTIES, TEXAS**

On August 2, 2007, Southwestern Railroad Company, Inc (SWRR) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for SWRR to abandon a line of railroad extending from railroad milepost 0 10, at, Shattuck, Oklahoma, to railroad milepost 85 4, in Spearman, Texas. which traverses U.S. Postal Service Zip Codes 73858, 79034, 79024, 79005, 79070, 79033, 79093, and 79081, a distance of 85 3 miles in Ellis County, Oklahoma and Lipscomb, Ochiltree and Hansford Counties, Texas. There are no stations on the line for which abandonment exemption was filed.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by October __, 2007).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,300. See 49 C.F.R. 1002.2(f)(25).

All interested person should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$200 filing fee. See 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-341 (Sub-No. 1X) and must be sent to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001, (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005. Replies to the petition are due on or before September __, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245-0230 or refer to the full abandonment or discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339].

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be available

within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW STB DOT Gov "

Decided _____ 2007

By the Board, David M. Konschnik, Director, Office of Proceedings,

Vernon A. Williams

Secretary

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C F R. § 1152 60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No AB-341 (Sub-No 1X) was mailed via first class mail on August 2, 2007, to the following parties

State Public Service Commission Mr Bob Jackson, Director Office of General Counsel Texas Department of Transportation 125 E 11 th Street Austin, TX 78701-2483 Oklahoma Corporation Commission Jim Thorpe Building P O Box 52000 Oklahoma City, OK 73152-2000 Oklahoma Transportation Department 200 NE 21 st Street Oklahoma City, OK 73105 Military Traffic Management Command M'TMCTEA ATTN Railroads for National Defense 720 Thimble Shoals Blvd , Suite 130 Newport News, VA 23606-2574	National Park Service Chief of National Recreation and Trails U S Dept of Interior - Nat'l Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001 National Park Service National Park Service 12795 Alameda Pkwy Denver, CO 80225 U.S. Department of Agriculture U S Department of Agriculture Chief of the Forest Service 4th Floor N W , Auditors' Building 14th St and Independence Ave , S W Washington, DC 20250
--	--

Dated August 2, 2007


Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No AB-341 (Sub-No 1X) was published on July 1, 2007, in the Woodward News, a newspaper of general circulation in Ellis County, Oklahoma and on July 6, 2007, in the Amarillo Globe-News, a newspaper of general circulation in Lipscomb, Ochiltree and Hansford Counties, Texas, as required by 49 C.F.R. § 1105.12

Dated August 2, 2007


Karl Morell

**ENVIRONMENTAL REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C F R § 1105.7, the undersigned hereby certifies that a copy of the Environmental Report in STB Docket No. AB-341 (Sub-No. 1X) was mailed via first class mail on June 22, 2007, to the following parties:

Tom Adams Governor's Office of Budget and Planning P O Box 12428 Austin, TX 12428	National Park Service 12795 Alameda Parkway Denver, CO 80225
Department of Transportation 200 N E 21st Street Oklahoma City, OK 73105-3204	Environmental Protection Division P O Box 12548 Austin, TX 78711-2548
Oklahoma Corporation Commission Jim Thorpe Bldg Oklahoma City, OK 73105	Oklahoma Department of Environmental Quality 707 North Robinson Street Oklahoma City, OK 73012
Ellis County Commissioners P.O. Box 257 Arnett, OK 73832-0257	U S Environmental Protection Agency 1445 Ross Avenue Suite 1200 Dallas, TX 75202
Lipscomb County Commissioners P O. Box 69 County Courthouse Lipscomb, TX 79056-0069	U.S. Army Engineer District, Tulsa 1645 S 101 E Avenue Tulsa, OK 74128-4609
Ochiltree County Commissioners 511 S Main Street County Courthouse Perryton, TX 79070-3127	The National Geodetic Survey Department of Commerce/NOAA SSMC3 Station 9356 1315 East West Highway Silver Spring, MD 20910
Hansford County Commissioners P O Box 367 County Courthouse Spearman, TX 79081-0367	State Conservationist USDA Natural Resources Conservation Service P O Box 298 Arnett, OK 73832
City of Spearman 30 SW Court Street Spearman, TX 79081	U.S. Fish and Wildlife Service 500 Gold Avenue, SW Albuquerque, NM 87102

<p>State Conservationist USDA Natural Resources Conservation Service 909 W 9th Avenue Spearman, TX 79081-3417</p>	<p>National Park Service Recreational Resources Assistance Division 1849 C Street, NW Washington, D C 20240-0001</p>
<p>State Conservationist USDA Natural Resources Conservation Service 800 N Main Street, STE D Perryton, TX 79070-2321</p>	<p>State Conservationist USDA Natural Resources Conservation Service 237 Main Street Follett, TX 79034</p>
<p>State Conservationist USDA Natural Resources Conservation Service 101 South Main Street Temple, TX 76501-7602</p>	

Dated August 2, 2007


Karl Morell

**HISTORIC REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C.F.R. § 1105.8(c), the undersigned hereby certifies that a copy of the Historic Report in STB Docket No. AB-341 (Sub-No. 1X) was mailed via first class mail on June 22, 2007, to the following parties:

Oklahoma Historic Preservation Society
2100 North Lincoln Boulevard
Oklahoma City, OK 73105

Texas Historical Commission
P O Box 12276, Capital Station
Austin, TX 78711

Dated: August 2, 2007



Karl Morell

WORKPAPER

Acct (Code)	< - - CURRENT MONTH - - - >			YEAR TO DATE - - - >		
	ACTUAL	BUDGET	VARIANCE	ACTUAL	BUDGET	VARIANCE
OPERATING INCOME						
Freight Revenues	45,111 00	18,000 00	27,111 00	415,580 00	527,000 00	(111,420 00)
Switching & Demurrage Rev	15,060 00		15,060 00	34,069 80		34,069 80
Car Repair Revenue						
Passenger Revenue						
Concession Sales						
Property Rents	911 40	1,000 00	(88 60)	26,955 06	32,000 00	(5,044 94)
Other Income Sundry	- - -	- - -	- - -	1,200 00	- - -	1,200 00
TOTAL OPERATING INCOME	61,082 40	19,000 00	42,082 40	477,804 86	559,000 00	(81,195 14)
OPERATING EXPENSE						
400L Wages & Salaries	9,029 04	7,700 00	1,329 04	116,661 81	92,400 00	24,261 81
406L Payroll Taxes	1,824 12	1,200 00	624 12	28,390 87	14,400 00	13,990 87
408L Employee Health Insurance	675 33	675 00	0 33	8,352 09	8,100 00	252 09
409G Commissions						
410G Travel Expense	350 00		350 00	5,549 78		5,549 78
411G Advertising & Promotion						
413G Entertainment (Prof)						
415G Consulting Fees						
418E Locomotive Rental						
421E Locomotive Fuel	18,638 49	4,500 00	14,138 49	94,123 31	71,400 00	22,723 31
422E Locomotive Repairs	1 89	800 00	(798 11)	8,581 76	9,600 00	(1,018 24)
423E Locomotive Supplies		800 00	(800 00)	4,269 65	9,600 00	(5,330 35)
424E Traincar Rental	3,272 60	500 00	2,772 60	13,547 08	6,000 00	7,547 08
426E Motor Vehicle Rental						
427E Motor Vehicle Expense	1,907 95	400 00	1,507 95	3,988 41	4,800 00	(811 59)
429E Equipment & Vehicle Fuel	830 73	400 00	430 73	9,095 74	4,800 00	4,295 74
430E Travel Expense Meals	210 63	50 00	160 63	271 46	600 00	(328 54)
431E Repair & Maint Equipment	58 35	150 00	(91 65)	2,899 26	1,800 00	1,099 26
433E Repair & Maint - Psngr Cars						
434E Equipment Rental	70 96	50 00	20 96	6,469 46	600 00	5,869 46
435M Track Repair Materials	164 43	3,500 00	(3,335 57)	21,448 44	42,000 00	(20,551 56)
436M Bridge Repair Materials		500 00	(500 00)		6,000 00	(6,000 00)
437M Car Repair Materials						
440G FRA User Fees				229 00		229 00
441G Property Taxes	4,454 53	4,200 00	254 53	48,373 59	50,400 00	(2,026 41)
442G Taxes & Licenses				120 00		120 00
443G Claims	12,771 90		12,771 90	12,771 90		12,771 90
444G Derailment Expense		1,000 00	(1,000 00)		12,000 00	(12,000 00)
451G Utilities	234 17	200 00	34 17	3,227 70	2,400 00	827 70
452G Telephone Expense	110 97	300 00	(189 03)	4,429 12	3,600 00	829 12
453G Radio Expense						
459G Rent Office / Shop						
460G Office Supplies		50 00	(50 00)	16 61	600 00	(583 39)
461G Supplies General	97 77	50 00	47 77	1,008 46	600 00	408 46
462G Supplies - Concessions						
463G Supplies Conces (Comp)						
464G Inventory for Resale						
470G Insurance General	8,825 93	4,600 00	4,225 93	102,849 75	55,200 00	47,649 75
480G Credit Card Discount / Fees						
490G Miscellaneous	174 71	50 00	124 71	474 71	600 00	(125 29)
TOTAL OPERATING EXPENSE	63,704 50	31,675 00	32,029 50	497,149 96	397,500 00	99,649 96
GROSS OPERATING PROFIT	(2,622 10)	(12,675 00)	10,052 90	(19,345 10)	161,500 00	(180,845 10)